

REMARKS

This is in response to the non-final Official Action currently outstanding with regard to the present application.

Claims 1 and 3-11 were pending in this application at the time of the issuance of the currently outstanding Official Action. By the foregoing Amendment, Claims 1, 10 and 11 have been amended. No Claims have been canceled, added or withdrawn. Accordingly, upon the entry of the foregoing amendment, Claims 1 and 3-11 will constitute the Claims under active prosecution in this application.

The Claims as they will stand upon the entry of the foregoing Amendment are set forth in full hereinabove (including appropriate status identifiers) as required by the Rules.

More particularly, in the currently outstanding Official Action the Examiner has:

1. Failed to re-acknowledge Applicants' claim for foreign priority under 35 USC §119 (a)-(d) or (f), and to reconfirm the receipt of the required copies of the priority documents by the United States Patent and Trademark Office;
2. Failed to re-acknowledge Applicants the acceptability of the drawings as filed with this application on January 8, 2001;
3. Acknowledged his consideration of the Information Disclosure Statements filed in this application on 18 August 2004 and 26 January 2004 by providing the Applicants with a copy of the Form PTO-1449/ PTO/SB/08a/b that accompanied those Statements duly signed, dated and initialed to confirm the consideration of the art listed therein;

4. Rejected Claims 1, and 3-11 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention; and
7. Rejected Claims 1 and 3-11 under 35 USC §103(a) as being unpatentable over Kay et al. (US Patent No. 5,544,143) in combination with Nakao et al. (US Patent No. 6,272,097) and further in view of Mori et al. (US Patent No. 4,400,062); and

No further comment regarding item 3 above is deemed to be required in these Remarks.

With respect to items 1 and 2, Applicants note that the Examiner has previously acknowledged their claim for foreign priority, the receipt by the United States Patent and Trademark Office of the required copies of the priority documents, and the acceptability of the drawings that accompanied the original filing of this application. However, Applicants respectfully submit that for the sake of good order and completeness of this response it is appropriate to note the status of these formalities for the record.

With respect to item 6, the Examiner has rejected claims 1 and 3-11 under 35 USC §112 second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner complains that it is ambiguous whether the "said stretching" language utilized in the claims is biaxial or uniaxial stretching.

By the foregoing Amendment, Applicants have amend the language "said stretching" found at lines 26, 31, and 28 of Claims 1, 10 and 11 respectively to read -- said unilaxial or biaxial stretching --. Applicants respectfully submit that this change in phraseology makes each of the independent claims of this application internally consistent and removes any possible ambiguity regarding whether the stretching referred to at the portions of those claims referred to by the Examiner. Specifically, the independent claims are now clear and definite in their recitation that the stretching previously referred to simply as "said stretching" is one or the other of the types of stretching mentioned earlier in those claims.

Accordingly, Applicants respectfully submit that the potential ambiguity referred to by the Examiner regarding Claims 1, 10 and 11 of this application has been removed by the foregoing Amendment thereby overcoming the Examiner's outstanding rejections under 35 USC 112, second paragraph. A decision so holding in response to this communication is respectfully requested.

With respect to item 7, the Examiner also has rejected claims 1 and 3-11 under 35 USC §103(a) as being unpatentable over Kay et al. (US Patent No. 5,544,143) in combination with Nakao et al. (US Patent No. 6,272,097) and further in view of Mori et al. (US Patent No. 4,400,062). The Examiner has conceded that the Kay and Nakao references alone are insufficient to support a rejection of the claims of this application. Accordingly, the issue in this application presently appears to the Applicants to be whether or not the addition of the Mori references' disclosures to those of the Kay and Nakao references are sufficient to support the Examiner's rejections. In this regard, the Examiner specifically has concluded that either or both of the cited Mori references disclose "a polyolefin-type polymer film characterized by a first type of film index ellipsoid, said polyolefin-type polymer film characterized by said first type of film index ellipsoid having been formed by uniaxially stretching or biaxially stretching a polyolefin-type polymer film characterized by a film index ellipsoid of a different type from said first type of film index ellipsoid such that said film index ellipsoid of said different type from said first type of film index ellipsoid is changed into said first type of film index ellipsoid by said stretching" as herein claimed. Applicants respectfully disagree.

In the interest of advancing this prosecution and clarifying any possible misunderstanding of the meaning of the claims as originally written, however, Applicants by the foregoing Amendment have now amended the independent claims of this application so as to indicate specifically that the film being claimed is a single layered film. This amendment is believed to completely address the Examiner's observation that the single layered nature of the film heretofore was not particularly specified in the claims thereby justifying his position that Applicants' previous argument to the effect that the Mori reference is limited to stacked films is not persuasive. In other words, by placing the single layered nature of the film specifically into the claims, Applicants respectfully submit that the Examiner's view that Applicants' previous argument required him to read limitations from the specification into the claims has been overcome.

Accordingly, Applicants respectfully submit that by specifying that the polyolefin-type polymer film is a film is a single layer structure wherein the original film ellipsoid type has been changed into a different film ellipsoid type by uniaxial or biaxial stretching, the foregoing Amendment clearly and definitely removes any possible ambiguity concerning whether the or not the film presently claimed is, or could be, the same as the manufactured film prior to subsequent stretching discussed in the Mori, et al reference. In particular, the Mori film is disclosed as being stretched by an elongation roll during manufacture. Applicants respectfully submit that this simply teaches, discloses and/or suggests only that as the film is being formed and taken up onto a roller, the very act of taking it up onto the discharge roller from the manufacturing operation adjusts its film ellipsoid type prior to the completion of its manufacture.

Hence, Applicant respectfully submits that the film utilized by Mori in the fabrication of his stacked waveplate structure is composed of a plurality of layers of film that have only the "different type" film index ellipsoid type (i.e., the as manufactured type that is "starting type" of film index ellipsoid referred to in the claims of this application). In other words, the Mori film is given a film ellipsoid type during its manufacture that in our opinion clearly appears to correspond to the film ellipsoid type of the claimed film prior to the subsequent uniaxial or biaxial stretching presently claimed for the purpose of changing the original film ellipsoid type (the "different" ellipsoid type) to another film ellipsoid type (the claimed "first" film ellipsoid type).

Accordingly, the foregoing amendment makes it clear that only a single polyolefin-type polymer film is contemplated by the present invention, not the stacked structure proposed by Mori, et al. Further, by specifying that the polyolefin-type polymer film claimed is a film wherein the original film ellipsoid type has been changed into a different film ellipsoid type by uniaxial or biaxial stretching, Applicants respectfully submit that the foregoing proposed amendment clearly and definitely removes any possible ambiguity concerning whether or not the film presently claimed is, or could be, the same as the manufactured film prior to subsequent stretching discussed in the Mori, et al reference.

In addition, Applicants respectfully note that since the direction(s) of stretch applied to the polyolefin-type polymer film are known and controlled in the present invention, the determination of the optical axis of the film is easier thereby facilitating the process of attachment the polyolefin-type polymer film to the integrated unit.

Consequently, as previously argued, since (i) none of the cited references discloses, teaches or suggests a transparent optical compensation film comprising a uniaxially-stretched or biaxially-stretched polyolefin-type polymer film as herein claimed, and (ii) the Examiner has conceded that none of the references alone disclose the present invention by virtue of his withdrawal of his previous anticipation rejection, Applicants respectfully submit that Claims 1, 10 and 11 as hereinabove amended, as well as the claims remaining after the foregoing Amendment that depend either directly or indirectly from Claim 1, are in condition for allowance.

More specifically, Applicants respectfully note that by employing a single layered, non-stacked transparent optical compensation film structure as now specifically claimed as a wave plate, it is possible to convert the incoming laser beam into a circularly polarized light or an elliptically polarized light and also to readily attach the transparent optical film to the optical components of the claimed device. Applicants respectfully submit that none of the cited references either alone or in combination with one another disclose, teach or suggest the present invention as now claimed within their "four corners" as would be required to sustain the Examiner's burden of showing a *prima facie* case of the obviousness of the claimed invention. To the extent that the Examiner's currently outstanding rejection is supported in the record, therefore, Applicants respectfully submit that it, like the previous rejection, from a substantive rather than formal phraseology standpoint, applies an improper "obvious to try" standard, and should be withdrawn.

The correct standards necessary to support a conclusion (*prima facie* case) of obviousness are as follows:

To establish a *prima facie* case of obviousness under Section 103, Title 35 United States Code (35 US §103), three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2D 1438 (Fed. Cir. 1991). (See, Manual of Patent Examining Procedure §2142 (8th Edition), at page 2100-2121, *et seq.*)

Applicants respectfully submit that not only do the references not disclose the transparent optical compensation film as now specifically claimed, but also that any suggestion for the use of such a film in the context of the present invention in the present record is to be found only in the present specification, not in the cited art.

Also as indicated previously, Applicants presently rely upon the patentability of the independent claims as support for the patentability of the dependent claims of this application. Accordingly, since Applicants respectfully submit that Claims 1, 10 and 11 as hereinabove amended are patentable for the reasons set forth, it is respectfully submitted that Claims 3-9 also are patentable. Further specific discussion concerning the Examiner's rejections of Claims 3-9, therefore, is not considered to be required in these Remarks.

For each and all of the foregoing reasons, it is respectfully submitted that the claims of this application as they will stand upon the entry to the foregoing Amendment are in condition for allowance. Further, it is respectfully submitted that the foregoing proposed amendment simply clarifies the nature of the claimed transparent optical compensation film by the incorporation of descriptive material from the specification confirming the heretofore implicit meaning that the claimed transparent optical compensation film is not an overlapped or stacked structure.

Entry of the foregoing amendment, reconsideration of this application, and allowance of Claims 1 and 3-11 as hereinabove amended in response to this communication, therefore, are respectfully requested.

Applicants also believe that additional fees beyond those submitted herewith are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. 04-1105, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

Date: April 27, 2005

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SIGNATURE OF PRACTITIONER

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